

**Notice of Allowability**

Application No.

10/676,971

Applicant(s)

PICKERING ET AL.

Examiner

Henry Baron

Art Unit

2616

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 7/12/2007.
2. ☒ The allowed claim(s) is/are 19-23, renumbered as 1-5 resp.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of the:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.  
(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached  
1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.  
(b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☒ Notice of References Cited (PTO-892) ✓
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08) ✓  
Paper No./Mail Date 09/20/2007
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material

5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment ✓
8. ☒ Examiner's Statement of Reasons for Allowance ✓
9. ☐ Other \_\_\_\_\_

### ***Detailed Action***

#### **Response to Remarks/Arguments**

1. The amendment filed 7/12/2007 under 37 CFR 1.111 has been entered. A Terminal Disclaimer has been submitted to overcome the obviousness-type double patenting rejection of Claims 19-23.

#### **EXAMINER'S AMENDMENT**

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.
3. Authorization for this examiner's amendment was given in a telephone interview with Donald R. Boys (Reg. No. 35,074) on July 16th, 2007
4. Claim 19, line 2, delete "choices".
5. Claim 19, line 2, and insert "type "after the word" media.
6. Claim 19, line 4, delete "Coupling", replace with "coupling"
7. Claim 19, line 6, delete "Monitoring", replace with "monitoring"
8. Claim 19, line 7, delete "Comparing", replace with "comparing"
9. Claim 19, line 4, delete "In", replace with "in"

#### **Allowable Subject Matter**

6. The Examiner finds Claims 19 – 23 of the present application allowable.
7. The following is a statement of reasons for the indication of allowable subject matter: Pickering teaches a system and method for managing bandwidth on demand for Internet protocol messaging and claims priority to its parent Pickering et al (U.S. Patent 6,628,666), hereafter Pickering. Though other prior references teach of digital network telephony (DNT), for example, Barzegar (U.S. Patent 6,363,079), these classes of patents are more directed to teaching the mechanics of connecting data

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between a circuit with a packet network. None of the patent in this epoch or, for that matter, publication prior to Pickering's priority date, teach of a system and method for monitoring the bandwidth of an established digital network telephone call and then, depending on network bandwidth availability, switching the call between a packet to switch network as is appropriate.

### *Conclusion*

1. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Henry Baron whose telephone number is (571) 270-1748. The examiner can normally be reached on 7:30 AM to 5:00 PM E.S.T. Monday to Friday.
2. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema Rao can be reached on (571) 272-3174. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
3. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Seema S. Rao*  
SEEMA S. RAO 7/23/07  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600

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